

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Brief October 18, 2000

**FREDERICK H. RUSSELL, JR. v. STATE OF TENNESSEE**

**Appeal as of Right from the Criminal Court for Wilson County**  
**No. 99-0045 and 99-0047     John D. Wootten, Jr., Judge**

---

**No. M2000-01491-CCA-R3-PC - filed January 25, 2001**

---

The Petitioner, pursuant to a plea agreement, pleaded guilty to two counts of aggravated vehicular homicide and was sentenced to concurrent sentences of twenty-five years on each count. The Petitioner filed a petition for post-conviction relief, which was dismissed by the trial court without an evidentiary hearing. The trial court determined that the petition did not comply with Tennessee Code Annotated § 40-30-206(d) in that the Petitioner failed to set out a clear and specific statement of all grounds for relief, including full disclosure of the factual basis of those grounds. The Petitioner now appeals, arguing that his petition was sufficient under Tennessee Code Annotated § 40-30-206(d) to entitle him to an evidentiary hearing. We conclude that although the Petitioner set forth an appropriate ground for relief in his petition, he did not allege a sufficient factual basis for the ground for relief as required by statute. Therefore, we affirm the trial court's dismissal of the petition.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which THOMAS T. WOODALL and NORMA MCGEE OGLE, JJ., joined.

Michael V. Thompson, Nashville, Tennessee, for the Appellant, Frederick H. Russell, Jr.

Paul G. Summers, Attorney General and Reporter; David H. Findley, Assistant Attorney General; Tom P. Thompson, Jr., District Attorney General; and Jerry D. Hunt, Assistant District Attorney General; for the appellee, State of Tennessee.

**OPINION**

The Petitioner, Frederick H. Russell, Jr., pursuant to a plea agreement, pleaded guilty on June 4, 1999 to two counts of aggravated vehicular homicide, Class A felonies, and received sentences of twenty-five years in the Tennessee Department of Correction (TDOC) for each count, to be served concurrently. The Petitioner subsequently filed a petition for post-conviction relief. The trial court denied the petition without an evidentiary hearing, concluding that the petition did not comply with

Tennessee Code Annotated § 40-30-206(d). Specifically, the trial court determined that the Petitioner failed to set forth in his petition a clear and specific statement of all grounds for relief, including a full disclosure of the factual basis for those grounds. The Petitioner now appeals the trial court's ruling, arguing that he should have been granted an evidentiary hearing on the basis of his petition. We affirm the trial court's dismissal of the petition.

Assistant Public Defender Virginia Townsend represented the Defendant at the time of his plea agreement. At the plea hearing, the trial court thoroughly questioned the Petitioner concerning the plea agreement and explained to the Defendant his constitutional rights, as well as the range of punishment applicable to the crime of aggravated vehicular homicide. The Defendant stated that he was "very much" satisfied with Ms. Townsend's representation. At the conclusion of the hearing, the trial court found that the Petitioner's plea was knowingly, intelligently and voluntarily made and sentenced the Defendant pursuant to the plea agreement.

Thereafter, on October 4, 1999, the Petitioner filed his petition for post-conviction relief. In the petition, the Petitioner made the following allegations:

3. Your Petitioner submits that in the approximately three meetings had with appointed counsel, Virginia Townsend of the Office of the Public Defender, he was encouraged to plead guilty and avoid conviction on all four counts of the indictment, the implication being that he had no defense and his sentence would be lengthy. The specifics of sentencing were never explained to him nor was he advised that the twenty-five (25) year sentence he agreed to exceeded the actual sentence he faced.

4. Your Petitioner would show the Court that otherwise applicable sentencing enhancement factors, a blood alcohol reading in excess of .20 percent by weight and two prior convictions of driving while under the influence of alcohol, were elements of the offenses of either aggravated vehicular homicide or vehicular homicide and as such should not be used to enhance his sentence.

5. Your Petitioner would further show the Court that he did not meet the criteria for consecutive sentencing contained in Section 40-35-115, T.C.A., and thus conviction on more than one count should result in concurrent sentences.

6. Your Petitioner would further show the Court that had he been convicted of the counts with which he was charged, the Court, at sentencing on the most serious charge, a Class A felony, would be required to start at the mid-range for said felony, twenty years, and enhance said sentence with any applicable factors. However, all relevant enhancement factors contained in Section 40-35-114, T.C.A., were elements of the offenses with which he was charged. Thus the maximum sentence which he faced should be twenty (20) years.

7. Your Petitioner would finally show the Court that his plea of guilty to two counts of aggravated vehicular homicide was not knowingly and voluntarily entered and that, but for the deficiencies of his representation, he would not have conceded his guilt to the charges. As a result of the foregoing, your Petitioner submits that his plea of guilty was obtained in violation of the Constitution[s] of the United States

and of the State of Tennessee in that he was denied the effective assistance of counsel during all phases of his prosecution.

The trial court dismissed the petition without an evidentiary hearing, ruling that the Petitioner had failed to submit a clear and specific statement of the grounds upon which relief was sought and a full disclosure of the factual basis for those grounds, as required by statute. See Tenn. Code Ann. § 40-30-206(d).

Tennessee Code Annotated §40-30-206(d) provides as follows: A petition for post-conviction relief

must contain a clear and specific statement of all grounds upon which relief is sought, including full disclosure of the factual basis of those grounds. A bare allegation that a constitutional right has been violated and mere conclusions of law shall not be sufficient to warrant any further proceedings. Failure to state a factual basis for the grounds alleged shall result in immediate dismissal of the petition.

Id. This Court has held that bare allegations that counsel failed to interview witnesses, failed to discover evidence not disclosed by the prosecution and failed to make proper objections during the trial do not sufficiently set forth a factual basis for a claim of ineffective assistance of counsel. See Pewitt v. State 1 S.W.3d 674, 676 (Tenn. Crim. App. 1999).

The Petitioner argues that paragraph seven of his petition contains a “clear and specific statement” of the ground upon which he seeks relief, namely that he did not receive effective assistance of counsel during “all phases of his prosecution,” which, in turn, caused his plea to be “not knowingly and voluntarily entered.” The Petitioner alleges that had he received effective representation, he would not have “conceded his guilt to the charges.” The Petitioner further argues that full disclosure of the factual basis for his claim of ineffective assistance of counsel with regard to his guilty plea is set forth in the second sentence of paragraph three as follows: “The specifics of sentencing were never explained to him nor was he advised that the twenty-five (25) year sentence he agreed to exceeded the actual sentence he faced.” Finally, the Defendant argues that paragraphs four, five, and six of his petition support his contention that his attorney failed to explain the specifics of sentencing to him or to advise him that his sentence pursuant to the plea agreement exceeded the sentencing range applicable to his offenses.

We believe that the disposition of this case depends on whether the Petitioner’s allegation in paragraph three of his petition that “the specifics of sentencing were never explained to him” qualifies as a “full disclosure of the factual basis” of the Petitioner’s claim that he was denied effective assistance of counsel. The trial court found that the petition was fatally defective in this regard and ruled as follows:

I’m inclined to agree with the [S]tate. And I believe that you have failed to set forth, under the requirements of Tennessee Code Annotated; 40-30-200, and seek the requirements, the clear and specific statements of the grounds upon which the relief that you’re seeking and full disclosure of the factual basis of those grounds.

I further find that just a simple bare allegation, and quite frankly, there's not even an allegation about ineffective assistance of counsel. There's a general comment about that; but there's not even an allegation with regard to that.

So, I find that the petition itself is deficient on its [sic] face. And I'm going to grant the State's motion to dismiss.

We agree with the trial court's ruling that the Petitioner failed to set forth "full disclosure of the factual basis of those grounds." The Petitioner does not state what trial counsel did or did not explain to him regarding sentencing. Moreover, we conclude that paragraphs four, five and six of the petition, which the Petitioner contends lend factual support to his claim of ineffective assistance of counsel, are mere conclusions of law. As the trial court noted, Tennessee Code Annotated § 40-30-206(d) states, "A bare allegation that a constitutional right has been violated and mere conclusions of law shall not be sufficient to warrant any further proceedings." Tenn. Code Ann. § 40-30-206(d). Furthermore, not only is the assertion by the Petitioner that "the twenty-five (25) year sentence he agreed to exceeded the actual sentence he faced" a conclusion of law, but it is an incorrect conclusion of law. The range of punishment for each count to which the Petitioner, a Range I offender, entered a guilty plea was fifteen to twenty-five years. See id. §§ 39-13-218(d); 40-35-112(a)(1).

Upon review of the Petitioner's petition for post-conviction relief and the record before us, we conclude that the Petitioner failed to state any factual basis to support his allegation that his trial counsel's performance was professionally deficient, nor does he state any factual basis as to how any such deficiency prejudiced him. Because the petition for post-conviction relief does not contain a full disclosure of the factual basis for the Petitioner's claim that he received ineffective assistance of counsel at the time of his plea, we further conclude that the trial court did not err by dismissing the petition without an evidentiary hearing. Therefore, we AFFIRM the judgment of the trial court.

---

ROBERT W. WEDEMEYER, JUDGE